

This letter discusses the sales and excise tax treatment of various Internet services. See 86 Ill. Adm. Code Part 495. (This is a GIL).

February 7, 2000

Dear Xxxxx:

This letter is in response to your letter dated August 28, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing to request a written determination from the Illinois Department of Revenue concerning certain sales (Retailers' Occupation Tax – 'ROT' and Service Occupation Tax – 'SOT') tax and telecommunications excise tax issues that are outlined below.

### **FACTS**

Our client is a corporate division ('the Division') located outside Illinois, but having Illinois nexus, that offers Internet access services, using satellite-based transmissions in addition to traditional telephone lines, fiber optics, or coaxial cable. The Department requests a written determination of the sales or use taxability and/or telecommunications excise taxability in Illinois of its two main lines of business. First, the Division operates as an Internet service provider ('ISP'), offering Internet access to both individuals and businesses, and including high-speed satellite downloading of Internet data with its traditional ISP services. Secondly, the Division performs high-speed satellite downloading services of Internet data for individuals and businesses that have secured a third party ISP service.

#### **1. ISP Access Service with High-Speed Satellite Downloading Service**

For purposes of its ISP service as a combined product with high-speed downloading, the Division purchases Internet access from a large ISP and resells this service to its customers in Illinois. Under this first main business line, the Division will bundle the resold Internet access service with its own high-speed satellite downloading service.

Under the combined Internet access and satellite downloading model, the Illinois customer connects to the Internet via the ISP with which the Division has contracted. The customer chooses web pages or data to access from the Internet. The data is sent over the Internet to the Division's satellite uplink facility, located outside Illinois (via landlines). From there, the data is transmitted by satellite to the customer's computer, located in Illinois. All data and images that are viewed or downloaded by the customer are routed through this high-speed downloading channel. The Division maintains Internet Protocol at all times during this transmission sequence until the data and/or images reach the ultimate consumer's computer location.

To receive the satellite service, Division customers must purchase, for a separate charge in a separate transaction, a satellite receiver and a one-meter satellite dish from a third party. The receiver and dish are to be located at the customer's computer location.

The benefit of the high-speed satellite downloading service is that customers can receive their data from the Web significantly faster than through typical telephone line modems.

## 2. High-Speed Satellite Downloading Service

Under the second main business line, the Division will sell its high-speed satellite downloading service as a separate service. This service is targeted toward those individuals and businesses that already have an ISP access service, but that are looking for faster downloading of Internet data. With the separate satellite downloading service, the customer's ISP routes data that the customer requests to the Division's satellite up-link facility, located outside of Illinois, instead of sending it directly to the customer over landlines.

The high-speed downloading, sold as a stand-alone service, operates in the way described in Part 1, *supra*. All data and images that are viewed or downloaded by the customer are routed through this high-speed downloading channel. The Division maintains Internet Protocol at all times during this transmission sequence until the data and/or images reach the ultimate consumer's computer location. This service is a separately charged-for service, as it is an addition to a customer's already existing ISP access service.

## **REQUEST**

We request a written determination as to whether the two services described above are subject to Illinois sales and/or use tax, or utility gross receipts tax. Specifically, 1) is the Division's provision of ISP service bundled with high-speed satellite downloading, as described above, to Illinois customers subject to Illinois sales (ROT/SOT) tax, or telecommunications excise tax, and 2) is the Division's provision of stand-alone high-speed satellite Internet downloading service, as described above, to Illinois customers subject to Illinois sales (ROT/SOT) tax?

## **ANALYSIS**

Our reading of the applicable Illinois tax laws and regulations leads us to believe that both of the services at issue are exempt from any Illinois sales (ROT/SOT) tax or telecommunications excise tax.

### *Telecommunications Excise Tax*

Illinois imposes an excise tax upon the act or privilege of originating or receiving both intrastate and interstate telecommunications in Illinois from a retailer. 35 ILCS 630/3 & 630/4. The tax is imposed on the gross charge for telecommunications. Id. Telecommunications is defined, in part, as 'transmission of messages or information by electronic or similar means, between or among points by ... satellite.' 35 ILCS 630/2(c).

Illinois, however, generally states that 'persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered telecommunications retailers.' See IL ST 00-0110-G.I.L. (6/28/2000); 86 IL Admin. Code 495.100(d). Also, 'the single monthly fee charged by [ISPs], which often represents a flat charge for a package of items such as Internet access ... would generally not be subject to Telecommunications Excise Tax.' See IL ST 99-0429-GIL (12/30/1999).

Under the facts outlined above, we believe that neither of the Division's services – the ISP service with high-speed satellite downloading and the separate high-speed satellite downloading – should be subject to Illinois telecommunications excise tax. The ISP service clearly is exempt because it involves the routing of Internet traffic in the same manner as traditional ISP services. It merely provides for a faster component (i.e. downloading) of that service. The ISP service is a complete Internet access service, for which no separate line or transmission charges are applied. The service is Internet access because all transmissions of images and data remain in Internet Protocol until they reach the ultimate consumer's location. Thus, the Division should not be treated as a telecommunications retailer and its service should not be subject to the telecommunications excise tax.

In the same vein, downloading of information from the Internet is an integral part of Internet access, because there is, in essence, no access unless information can be retrieved from the Internet. Thus, the stand-alone service of downloading information from the Internet, in Internet protocol, should be viewed as part of exempt Internet access even if it is charged for separately. Since no separate line or transmission charges are billed to a customer under the downloading service, the Division should not be treated as a retailer of telecommunications and its service should not be subject to the telecommunications excise tax.

### *Sales Tax (ROTSOT)*

Illinois imposes taxes on retail sales of tangible personal property and on sales of service on all tangible personal property transferred as an incident of a sale of service. 35 ILCS 120/2; 35 ILCS 115/3; 86 IL Admin. Code 140.101. The Division's services are not, by nature, tangible personal property and the Division does not transfer tangible personal property as incident to its services. Thus, the Division's services should not be subject to either Retailer's Occupation Tax or Service Occupation Tax.

## **CONCLUSION**

We respectfully request the Illinois Department of Revenue's written determination concerning the above-referenced issues. If any questions arise or any clarification is needed, please feel free to call me.

Thank you for your time and consideration.

The Illinois Retailers' Occupation Tax (commonly known as sales tax) is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILDS 120/1 et seq. This tax is measured by the seller's gross receipts from such sales made in the course of such business. Transactions which do not involve the sale of tangible personal property at retail are not subject to the Retailers' Occupation Tax. In addition, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/1 et seq. Since the services you describe do not include the transfer of tangible personal property to customers, charges for these services would not be subject to sales tax. Please note, however, that the tangible personal property used in providing these services in Illinois is subject to Use Tax.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

With regard to whether the services provided are subject to Telecommunications Excise Tax, it is the Department's position, as you have noted, that persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d).

Generally, persons that provide subscribers access to the Internet ("ISPs") and who do not, as part of that service, charge customers for the line or other transmission charges that are used to obtain access to the Internet, are not considered to be telecommunications retailers. It is our general understanding that most ISPs do not, as part of their billing, charge customers for such line charges. Instead, the ISPs pay their telecommunications suppliers all transmission costs that they incur in providing the Internet service. Generally, the ISP's customers also pay their telecommunications suppliers for all transmission costs incurred while using the service. This being the case, the single monthly fee charged by such ISPs, which often represents a flat charge for a package of items including Internet access, E-mail and electronic newsletters, would generally not be subject to the Telecommunications Excise Tax. If, however, the ISPs charge subscribers for line or other transmission charges, they should provide their telecommunications providers with Certificates of Resale and should, themselves, collect and remit tax.

We can envision three schemes regarding how the tax might be paid in the situation you described. First, the ISP from whom the Division purchases Internet access pays its telecommunications provider for the line or other transmission charges that are used to obtain access to the Internet as well as the associated Telecommunications Excise Tax. It does not charge the Division for the line or other transmission charges that are used to obtain access to the Internet. The Division does not charge its customers for the line or other transmission charges that are used to obtain access to the Internet. Second, the ISP from whom the Division purchases Internet access gives a resale certificate to its telecommunications provider for the telecommunications it uses in

providing Internet access services. The ISP then charges the Division for the line or other transmission charges that are used to obtain access to the Internet as well as the associated Telecommunications Excise Tax. The Division does not charge its customers for the line or other transmission charges that are used to obtain access to the Internet. Third, the ISP from whom the Division purchases Internet access gives a resale certificate to its telecommunications provider for the telecommunications it uses in providing Internet access. The Division gives the ISP a resale certificate for the line or other transmission charges that are used to obtain access to the Internet. The Division then charges its customers for the line or other transmission charges that are used to obtain access to the Internet as well as the associated Telecommunications Excise Tax. We do not have enough information to know which scheme the Division is part of. Therefore, we cannot say whether the Division should charge Telecommunications Excise Tax on the Internet service it sells.

It appears that the high- speed downloading service that the Division provides is different than the value added portion of service associated with Internet access. Persons who provide a transmission service from a satellite uplink facility to a customer's computer, sold both with Internet service and without Internet service, are providing telecommunications services subject to tax. (As you noted, Section 2(c) of the Telecommunications Excise Tax Act, 35 ILCS 630/2(c) provides that "telecommunications" includes "transmission of messages or information by electronic or similar means, between or among points by ...satellite or similar facilities.") If, in order to provide this service, the Division were purchasing telecommunications service from a telecommunications retailer and reselling it to its customers, the Division would be a telecommunications provider and would be responsible for collecting Telecommunications Excise Tax from its customers. If the Division were providing the telecommunications services itself, it also would be responsible for collecting Telecommunications Excise Tax from its customers and remitting it to the Department. The charges to the customer for these telecommunications services must be disaggregated from the non-telecommunications charges in the Division's books and records or all the charges will be subject to Telecommunications Excise Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.